

REMARKS

These remarks are directed to the office action mailed April 13, 2009, setting a three month shortened statutory period for response which expired on July 13, 2009. A one month extension request and required fee authorization accompanies this amendment to reset the period so as to expire on August 13, 2009. The office action issued by the Examiner and the citations referred to in the office action have been carefully considered.

Prompt reconsideration is requested in view of the above claim amendments and the following remarks. As indicated, amendments introduce no new matter. Claim 5 has been cancelled and claims 13 and 14 have been added. Claims 1-4, 6-10, and 12-14 are currently pending.

Claim Objections

Claims 1, 6, 8, and 9 have been objected to because of informalities. The claims have been amended as suggested by the Examiner. Applicant submits that the claims have now overcome the Examiner's objections.

Claim Rejections – 35 U.S.C. § 112

Claims 3-4 and 9 have been rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicant submits that claims 3-4 and 9 are dependent on claim 2, which provides sufficient antecedent basis for the limitation of "baffles." Applicant submits that amended claims 3-4 and 9 are patentable under 35 USC §112.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4, 6-10, and 12 have been rejected under 35 USC §102(b) as being anticipated by Downes (UK Patent No. 2,229,689).

Downes teaches a complete wheel guard construction that replaces a standard wheel arch. The wheel guard construction has a forward air ingress mesh and **curved vanes** that cover a substantial circumferential portion of the wheel. In contrast, independent claim 1 has been amended to recite a device comprising a **generally planar** panel that is to be mounted substantially vertically behind a vehicle wheel. Applicant submits that Downes does not teach or suggest all of the elements and limitations of claim 1. Therefore independent claim 1 and the claims dependent therefrom are not anticipated and are thus patentable under 35 USC §102.

Claim Rejections – 35 U.S.C. § 103

Claim 5 has been rejected under 35 USC §103(a) as being unpatentable over Downes in view of Metcalf (US Patent No. 5,257,822).

Downes teaches a complete wheel guard construction that replaces a standard wheel arch. As part of this wheel guard construction, Downes teaches a forward air ingress mesh (10) that is “provided to allow the ingress of air to the upstream side of the vane arrangement.” The wheel guard is specifically designed with a forward mesh to allow the ingress of air which has a fundamental effect on the dynamics of the wheel guard and the formation and properties of spray produced during motion in wet condition. The curved vanes (4 and 5) of Downes are designed to work in conjunction with the air flow characteristics provided by the forward air ingress mesh.

A standard wheel arch that does not have a forward air ingress mesh also does not have the associated ingress of air. Therefore, the air flow characteristics and resulting spray formation and properties in a standard wheel arch **are very different** than the specifically designed wheel guard of Downes. Since air flow within a wheel arch environment is transient, turbulent, and complex, the outcome of any design change is inherently unpredictable. Applicant’s claim 1 teaches a device comprising a **generally planar** panel that specifically addresses the air flow characteristics associated with a standard wheel arch. It would not be obvious for one skilled in the art to arrive at the design of Applicant’s device without relying on Applicant’s teachings.

Furthermore, as described on page 1, lines 17-22 of Applicant’s specification,

“it has been found that [the arched wheel guard arrangement of Downes] does not work since, when the vehicle is travelling at speed, air is forced into the upper area of the channels creating a back pressure in the channels by travelling down the pockets which prevents the spray from entering the channels.”

Applicant teaches in claim 14, a method, and in claim 1, a device comprising a **generally planar** panel that is **mounted substantially vertically behind a vehicle wheel** located in a standard wheel arch environment. By teaching a device that is generally planar and mounted substantially vertically behind the wheel, Applicant eliminates the flow characteristic problem of sprays not entering the channels, which is clearly not obvious and not addressed by Downes.

The fender flaps as taught in Metcalf suppress spray by absorbing the impact energy of the water spray and redirecting the water, as shown in Fig. 2A and 2B. There is no teaching or suggestion of reducing spray with a device that separates air from the pulverized water emissions. Therefore, Metcalf does not take into consideration the air flow characteristics in the wheel arch of a moving vehicle. **Thus combining Downes and Metcalf does not address the specific air flow characteristics and resulting spray formation and properties in a standard wheel arch.** Furthermore, without Applicant's teachings, it would not be obvious to one skilled in the art if combining Downes and Metcalf would overcome the flow characteristic problem associated with the device as taught by Downes.

Claim 13 recites a device for preventing spray that includes a plurality of vertical baffles that are **extruded** and that have a **plurality of spacers between the baffles** that are supported by elongate horizontal shafts. None of the cited references teach or suggest extruded baffles with spacers positioned between the baffles.

Applicant submits that none of the cited references in any combination teach or suggest all of the elements and limitations of independent claims 1, 13, and 14. Therefore claims 1, 13, and 14, and the claims dependent therefrom are not obvious and are therefore patentable under USC §103.


Conclusion

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to **Deposit Account Number 50-2638**. Please ensure that Attorney Docket Number 102965-010100 is referred to when charging any payments or credits for this case.

Respectfully submitted,

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